IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

NTP, INC., Plaintiff, v. **CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,** Defendant.	**CIVIL NO. 3:07cv549-JRS**
NTP, INC., Plaintiff, v. **T-MOBILE USA, INC.,** Defendant.	**CIVIL NO. 3:07cv548-JRS**
NTP, INC., Plaintiff, v. **AT&T MOBILITY, LLC,** Defendant.	**CIVIL NO. 3:07cv550-JRS**
NTP, INC., Plaintiff, v. **SPRINT NEXTEL CORP.,** Defendant.	**CIVIL NO. 3:07cv551-JRS**

ORDER

This matter is before the Court upon the suggestion of the Magistrate Judge who reports that a particular issue involving a potential defense that may be asserted by certain of the Defendants is inhibiting meaningful settlement negotiations over which he is presiding. Accordingly, the Court, concluding that it is in the best interest of judicial economy and efficiency, and that it is otherwise appropriate and just to do so, hereby ORDERS that the Stay previously entered on November 2, 2007 (Docket No. 28) is partially lifted only with regard to wireless service provider Defendants Cellco Partnership, T-Mobile USA, Inc., AT&T Mobility, LLC, and Sprint Nextel Corp. (collectively the "WSP Defendants"), and only as follows:

1.) The Stay shall be "lifted" for the limited purpose of permitting the parties to engage in such relevant factual discovery between them as they deem necessary in order to only address the threshold issue of WSP Defendants' so-called "pipeline defense" with respect to such claims as numbers 34 and 45 of U.S. Patent No. 5,436,960 (the "960 Patent") (cited as examples only), with leave being granted for those same defendants to then file a motion for summary judgment on the issue. The "pipeline defense" essentially asserts that the WSP Defendants cannot be held liable for direct infringement because they do not perform all necessary steps or act as alleged in the infringement contentions; or otherwise direct or control third parties to do so. Specifically, the "pipeline defense" asserts that the accused wireless networks are "dumb pipelines" or "agnostic" as to the nature of the data being transmitted through them, unaware of whether any particular data packet contains email data. Thus, per the argument, the transmission of email data to the WSP Defendants' customers via the accused wireless networks allegedly avoids direct infringement of the subject claims.

2.) During the focused discovery period, WSP Defendants may also conduct discovery to the extent necessary to address the issue regarding Plaintiff's infringement contentions. In this regard, within fourteen (14) days of the date of this Order (January 31, 2011), Plaintiff shall serve upon each WSP Defendant a "Plaintiff's Claim Chart," which shall identify in regard to sample claims 34 and 45 of U.S. Patent No. 5,436,960 (the "960 Patent") (which are understood to be fairly representative of all subject claims): (1) which specific products or methods of each defendant it alleges literally infringe each such claim, and (2) where each element of each claim is found in each product or method listed in (1), including the basis for each contention that the element is present. If Plaintiff contends that there is infringement of any claim pursuant to the doctrine of equivalents, Plaintiff shall separately indicate such on its claim chart and, in addition to the information required for literal infringement, Plaintiff shall also explain each of the functions, ways and results that it contends are equivalent, and why it contends that any differences are not substantial.

3.) Within fourteen (14) days of the date of this Order (January 31, 2011), the WSP Defendants shall provide, either jointly or individually, their statement(s) of the factual and legal basis for their respective position(s) regarding the "pipeline" defense so as to better focus any ensuing discovery as provided for herein.

4.) The period of limited discovery shall commence as of the date of this Order and it shall terminate fifty-five (55) days hereafter, inclusive of any response period. All responses and objections to requests for production of documents, interrogatories, and requests for admission shall be due within fifteen (15) days of service, rather than the period specified by Rule, in order to accommodate the limited discovery period.

5.) Leave is hereby GRANTED for the WSP Defendants to file a joint motion for summary judgment addressing the so-called "pipeline defense" within seventy (70) days of the date of this Order, with leave also being GRANTED to each individual WSP Defendant to supplement such motion as any may deem necessary and appropriate. Inasmuch as the Court deems that it lacks the authority to require third-party discovery with response periods less than are provided for by Rule, the issue shall be addressed by the parties on the good faith assertion that such third-party evidence, if any, is believed to exist, subject to later production, if necessary. Plaintiffs shall file a brief in opposition within eighty-five (85) days of the date of this Order, to which WSP Defendants may file a reply brief, collectively or individually, within ninety-five (95) days of the date of this Order.

6.) The parties may amend any deadlines established herein by agreement, and without further leave of Court, provided that all briefing is completed and filed within ninety-five (95) days of the date of this Order.

7.) Neither this Order, nor the WSP Defendants' motion for summary judgment filed pursuant hereto, shall prejudice, or otherwise foreclose the WSP Defendants' right to subsequently file a dispositive motion for summary judgment on any other ground, collectively or individually, should the matter proceed upon resolution of the "pipeline defense" issue. Moreover, any party's use of discovery procedures during the limited discovery period shall not adversely impact its use of relevant procedures generally, should the matter proceed with further discovery.

8.) Should any party wish to request oral argument on the motion for summary judgment, it must do so no later than ninety (90) days from the date of this Order, and pursuant to the Court's determination that such argument will assist the Court in resolving the motion.

Let the Clerk file this Order electronically and notify all counsel accordingly.

It is so ordered.

/s/
James R. Spencer
Chief United States District Judge

Richmond, Virginia
Dated: January 18, 2011